

ADMINISTRATIVE APPEAL OF WAYNE H. EVANS

v.

ABERDEEN AREA DIRECTOR, ET AL.

IBIA 75-61-A

Decided November 14, 1975

Appeal from the administrative decision of the Area Director affirming the action of the Superintendent of the Rosebud Agency canceling appellant's lease.

Affirmed.

1. Indian Lands: Leases and Permits

A lease canceled by the Superintendent of an Indian Agency for nonpayment of rent is not reinstated when rents are subsequently accepted pending an administrative appeal.

APPEARANCES: Wayne H. Evans, pro se.

OPINION BY ADMINISTRATIVE JUDGE WILSON

This appeal was referred to the Board for decision by the Commissioner, Bureau of Indian Affairs.

Appellant, Wayne H. Evans, leased a quarter section of land (Allotment No. RS-1005) located in Clark County, South Dakota, which belonged to Bertha Horn Snowfly and was held in trust for her by the United States. The term of the lease was from November 1, 1970, to October 31, 1975. Rent for this property was to be \$240 per year payable direct to the lessor.

The lease was canceled for nonpayment of rent by the Superintendent of the Rosebud Agency, Rosebud, South Dakota, on December 18, 1974, pursuant to the lessor's written request of October 30, 1974, effective December 31, 1974.

Prior to the aforementioned cancellation, the Superintendent of the Rosebud Agency on November 5, 1974, mailed a show cause letter to appellant as required by Department of the Interior regulations (25 CFR 131.14). This letter set forth delinquent rentals for the period November 1, 1970, through October 31, 1974, and requested verification of payments if any had been made. Appellant was also advised to show cause why the lease should not be canceled. Subsequent to this notice on November 16, 1974, \$500 was paid by the appellant to the Superintendent. Subsequent to the cancellation notice of December 18, 1974, an additional \$507.40 was paid to the superintendent by appellant.

Appellant maintains that there has been faithful compliance of the lease terms and that, in addition to the cash payments mentioned, there were certain payments in lieu of cash, primarily a team of horses, which appellant states were given to the lessor on the date lessor signed the lease, and therefore the lease should not be canceled.

The Board notes that as of the date of this decision the term of the lease has expired. It is not clear from the file whether or not the appellant retained possession of the land pending disposition of his appeal. There is some suggestion that perhaps he did. The Board further notes that the file contains a copy of a performance bond presumably adequate to protect the lessor after the aforementioned payments were made on the lease by appellant. The Board also notes that during the pendency of this appeal the lessor, Bertha Horn Snowfly, died.

[1] A lease canceled by the Superintendent of an Indian Agency for nonpayment of rent is not reinstated when rents are subsequently accepted pending administrative appeal. Considering the circumstances, cancellation in this case appears to have been justified and made according to procedures in Department of the Interior regulation (25 CFR 131.14). Accordingly, the Area Director's decision of April 3, 1975, should be affirmed.

NOW, THEREFORE, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1(2), as amended June 12, 1975, the decision of the Aberdeen Area Director dated April 3, 1975, sustaining the cancellation of appellant's lease by the Superintendent of the Rosebud Indian Agency is hereby AFFIRMED.

This decision is final for the Department.

Done at Arlington, Virginia.

Alexander H. Wilson
Administrative Judge

I concur:

Mitchell J. Sabagh
Administrative Judge